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FEDERAL COMMUNICATIONS COMMISSION

September 13, 1995

Mr. William Caton
Secretary
Federal Communications Commission
1919 M St, N.W.
Room 222
Washington, DC 20554

Re: FCC 94-324, MM Docket No. 94-150, FCC 94-322, MM Docket No 91-221, and FCC 95-315, MM Docket 87-268

Dear Mr. Caton,

On Wednesday, September 13, 1995, the Local Station Ownership Coalition representatives including:

Claudia James - Podesta Associates
Tony Podesta - Podesta Associates
Greg Schmidt - Local Station Ownership Coalition
Milton Maltz - Chairman, Malrite Communications
Ron Inman - V.P., Ellis Communications

met with Commissioner Ness, Commissioner Quello, Commissioner Chong, Brian Carter, Counsel to Commissioner Barrett, Julius Genachowski, Counsel to Chairman Hundt, and Bill Kennard, General Counsel, to discuss the Commission's local television ownership rule as well as high definition television (HDTV). A copy of the presentation is attached.

Sincerely,

Claudia James

Claudia James, President, Podesta Associates
Representing the Local Station Ownership Coalition

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Local Station Ownership Coalition

ABRY Communications
Boston, MA

Act III Broadcasting, Inc.
New York, NY

Argyle Television Holdings, Inc.
San Antonio, TX

Blade Communications, Inc.
Toledo, OH

Clear Channel Television
San Antonio, TX

Ellis Communications
Atlanta, GA

Granite
New York, NY

Kelly Broadcasting Co.
Sacramento, CA

LIN Television Corporation
Providence, RI

Malrite Communications Group, Inc.
Cleveland, OH

Outlet Communications, Inc.
Cranston, RI

Pappas Telecasting Companies
Visalia, CA

Providence Journal Broadcasting Corporation
Providence, RI

River City License Partnership
St. Louis, MO

Sinclair Broadcast Group, Inc.
Baltimore, MD

Waterman Broadcasting Corp.
Fort Myers, FL

entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, or controlling, or having a cognizable interest in, television stations which have an aggregate national audience reach exceeding—

"(A) 35 percent, for any determination made under this paragraph before one year after the date of enactment of this section; or

"(B) 50 percent, for any determination made under this paragraph on or after one year after such date of enactment.

Within 3 years after such date of enactment, the Commission shall conduct a study on the operation of this paragraph and submit a report to the Congress on the development of competition in the television marketplace and the need for any revisions to or elimination of this paragraph.

"(2) MULTIPLE LICENSES IN A MARKET.—

"(A) IN GENERAL.—The Commission shall prohibit a person or entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, or controlling, or having a cognizable interest in, two or more television stations within the same television market.

"(B) *Exception for multiple UHF stations and for UHF-VHF combinations.*—*Notwithstanding subparagraph (A), the Commission shall not prohibit a person or entity from directly or indirectly owning, operating, or controlling, or having a cognizable interest in, two television stations within the same television market if at least one of such stations is a UHF television, unless the Commission determines that permitting such ownership, operation, or control will harm competition or will harm the preservation of a diversity of media voices in the local television market.*

"(C) *Exception for VHF-VHF combinations.*—*Notwithstanding subparagraph (A), the Commission may permit a person or entity to directly or indirectly own, operate, or control, or have a cognizable interest in, two VHF television stations within the same television market, if the Commission determines that permitting such ownership, operation, or control will not harm competition and will not harm the preservation of a diversity of media voices in the local television market.*

"(c) *Local Cross-Media Ownership Limits.—In a proceeding to grant, renew, or authorize the assignment of any station license under this title, the Commission may deny the application if the Commission determines that the combination of such station and more than one other nonbroadcast media of mass communication would result in an undue concentration of media voices in the respective local market. In considering any such combination, the Commission shall not grant the application if all the media of mass communication in such local market would be owned, operated, or controlled by two or fewer persons or entities. This subsection shall not constitute authority for the Commission to prescribe regulations containing local cross-media ownership limitations. The Commission may not, under the authority of this subsection, require any person or entity to divest itself of any portion of any combination of stations and other media of mass communications that such person or entity owns, operates, or controls on the date of enactment of this section unless such person or entity acquires another station or other media of mass communications after such date in such local market.*

"(d) *Transition Provisions.—Any provision of any regulation prescribed before the date of enactment of this section that is inconsistent with the requirements of this section shall cease to be effective on such date of enactment.*

The Commission shall complete all actions (including any reconsideration) necessary to amend its regulations to conform to the requirements of this section not later than 6 months after such date of enactment. Nothing in this section shall be construed to prohibit the continuation or renewal of any television local marketing agreement that is in effect on such date of enactment and that is in compliance with Commission regulations on such date.".

(b) CONFORMING AMENDMENT.—Section 613(a) of the Act (47 U.S.C. 533(a)) is repealed.

SEC. 303. FOREIGN INVESTMENT AND OWNERSHIP.

(a) STATION LICENSES.—Section 310(a) (47 U.S.C. 310(a)) is amended to read as follows:

"(a) GRANT TO OR HOLDING BY FOREIGN GOVERNMENT OR REPRESENTATIVE.—No station license required under title III of this Act shall be granted to or held by any foreign government or any representative thereof. This subsection shall not apply to licenses issued under such terms and conditions as the Commission may prescribe to mobile earth stations engaged in occasional or short-term transmissions via satellite of audio or television program material and auxilliary signals if such transmissions are not intended for direct reception by the general public in the United States.".

House Report Language
on TV Ownership Rule Change

Section 302. Broadcast ownership

Section 302 amends Title III of the Communications Act by inserting a new section 337 addressing broadcast ownership.

Section 337, subject to the restrictions specified in this section, prohibits the Commission from prescribing or enforcing any regulation which prohibits or limits, on a national or local basis, a licensee from holding any form of ownership or other interest in two or more broadcast stations or in a broadcast station any other medium of mass communication. This section also prohibits the Commission from prescribing or enforcing any regulation which prohibits a person or entity from owning, operating or controlling two or more networks of broadcast stations or from owning, operating, or controlling a network of broadcast stations and any other medium of mass communications.

For purposes of this section, it is the intention of the Committee that "medium of mass communication" in a given local market shall include only radio and television broadcast stations licensed to communities in the market, daily newspapers published in communities in the market, and cable television or other equivalent video delivery systems which serve communities in the market. The Committee intends that the ownership restrictions contained in section 337 apply only to the acquisition of media outlets and not to the creation of new media outlets.

Section 337(b)(1) is intended to eliminate current limits placed on television audience nationwide and to place new limits on ownership of television stations by a single entity at a national audience reach exceeding 35 percent for the year following enactment of this section and, after one year, to 50 percent of the national audience. This section does not change the methodology for calculating "national audience reach" currently employed by the Commission. For example, currently, the audience reach of UHF stations is discounted. This "UHF discount" appropriately reflects the technical and economic handicaps applicable to UHF facilities and the Committee does not envision that the UHF discount calculation will be modified so as to impede the objectives of this section.

This section directs the Commission to conduct a study of the operation of these national ownership limitations and to submit a report to Congress on the development of competition in the television marketplace and the need, if any, to revisit these limitations.

Section 337(b)(2) sets forth the circumstances under which one entity may own or operate two television stations in a local market. The Committee believes that significant changes in local video markets, which include increases in the number of local television stations and other multichannel competitors, require substantial deregulation of the local television ownership rules. This is especially true with respect to UHF stations which continue to operate with significant technical and economic handicaps. The Committee believes that these market developments require substantial deregulation of local station ownership and greater reliance on marketplace forces to assure vigorous competition and diversity. Permitting common ownership of stations will promote the public interest by harnessing operating efficiencies of commonly owned facilities, thereby increasing competition and diversity.

Subparagraph (B) creates a strong presumption in favor of UHF/UHF and UHF/VHF combinations. The Committee does not envision that this section will be utilized by the Commission to impose a case-by-case review process. Rather, the Committee expects that the Commission's review of UHF/UHF and UHF/VHF combinations will be triggered only where there if evidence of harm to competition and diversity, e.g., where there is a danger of undue concentration.

Subparagraph (C) clarifies that the Commission may also permit VHF/VHF combinations where it determines that doing so will not harm competition and diversity. Unlike the presumption in favor of UHF/UHF and UHF/VHF combinations, the Committee envisions the Commission's review under subparagraph (C) will be on a case-by-case basis.

Subsection (c) permits the Commission, under certain circumstances, to consider concentrations of local media interests in proceedings to grant, renew or authorize the assignment of station licenses. In a proceeding to grant, renew, or authorize the assignment of any station license under this title, the Commission may deny the application if the Commission determines that the combination of such station and more than one other non-broadcast media of mass communication would result in an undue concentration of media voices in the respective local market. The Commission shall not grant applications that would result in two or fewer persons or entities controlling all the media of mass communications in the market. This section does not constitute authority for the Commission to prescribe regulations containing local cross-media ownership limitations. Further, it is not the intent of the Committee to require divestiture of any existing interests, but the Commission may condition the grant of an application to acquire additional media interests. The Committee intends this limitation to balance the needs of owners of media properties and the historic interest in maintaining a diversity of voices in the media. The Committee believes that these provisions permit appropriate consolidation of media properties to occur while maintaining several independent voices in each local market.

Subsection (d) clarifies that any Commission rule prescribed prior to the date of enactment of this legislation that is inconsistent with the requirements of this section is effectively repealed on the date of enactment. It is the Committee's intention that rules necessary to implement the provision of the Act concerning broadcast ownership be finalized within six months of enactment. Again, the Committee notes that in adopting limits in ownership, it specifically has not changed the Commission's current methodology of calculating or attributing ownership. The Committee does not envision the Commission, either in pending rulemaking proceedings on television ownership and attribution standards, making changes in its rules which would impede the objectives of this section.

Nothing in subsection (d) is to be construed to prohibit the continuation or renewal of any television local marketing agreement in effect on the date of enactment. The Committee wishes to note the positive contributions of television local marketing agreements and to assure that this legislation does not deprive the public of the benefits of existing local marketing agreements that were otherwise in compliance with Commission regulations on the date of enactment of this legislation. The efficiencies gained through these agreements have reaped substantial rewards for both competition and diversity, enabling stations to go on the air which would not otherwise be able to obtain financing, and saving failing stations which would otherwise go dark.

Section 303. Foreign investment and ownership

Section 303 amends section 310(a) of the Communications Act to exempt licenses to mobile earth stations engaged in occasional or short-term transmissions via satellite of audio or television program material and auxiliary signals if such transmissions are not intended for direct reception by the general public in the United States. The Committee intends this provision to exempt satellite newsgathering (SNG) equipment from the provisions of section 310(a), which bars foreign government representatives from receiving a radio station license. SNG terminals are satellite earth stations that can be transported to a program origination site, either in the U.S. or in foreign countries, by car, truck and/or commercial aircraft.

Broadcast stations or networks owned by a foreign government, receiving some form of government support, or having some form of relationship with the government (which constitute the vast majority of foreign broadcast stations or networks) under current law may be construed to be foreign governments or "representatives" for purposes of section 310(a). Because of the widespread impression that U.S. law imposes an impediment to the operation of SNG facilities by foreign broadcast stations or networks, foreign authorities have reacted by taking actions, or are considering taking actions, that effectively bar or make it more difficult for the U.S. media to operate their own SNG terminals within the foreign authorities' jurisdictions. By amending section 310(a), the Committee intends to provide the Commission with explicit authority for licensing SNG operations in the United States for these entities that have some form of relationship to a foreign government and to assure that U.S. broadcast stations or networks maintain their current authority to operate SNG equipment in other countries.

Section 310(b)(4) of the Communications Act allows foreign ownership of the holding company of a radio licensee to exceed 25 percent but it gives the Commission the discretion to revoke or deny the grant of a license "*if* the Commission finds that the public interest will be served by the refusal or revocation of such license." [12] A treatise on international telecommunications regulation compiled by the Federal Communications Bar Association in 1993 correctly interprets section 310(b)(4) as follows: "Under the terms of the statute, the Commission must find that a refusal of the license to a company in which alien ownership in its holding company exceeds the twenty-five percent benchmark serves the public interest. Therefore, the onus is on the Commission to prove that the relaxed public interest standard mandates a *refusal* of the license request. [13] The Committee notes that the Commission has consist-

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[12] 47 U.S.C. §301(b)(4) (emphasis added).

[13] Tara Kalgher Giunta, "Foreign Participation in Telecommunications Projects," in Federal Communications Bar Association, International Practice Committee, International Communica-

LMA's Bring New Stations

WFTE Channel 58, Salem, IN/Louisville, KY (UHF, Paramount)
WDRB Channel 41, Louisville, KY (UHF, Fox)

Thomas Ledford is a Salem, Indiana dairy farmer who received a construction permit from the FCC in 1990 to build a television station. He met two of the Commission's key criteria for new licensees: ties to the local community and civic involvement.

No Financing
Ledford struggled to find a loan, but no bank thought the station would be profitable enough to risk financing. For three years, Ledford went back to the FCC for an extension of his construction permit.

LMA Boosts Value
However, an LMA agreement with WDRB-Louisville suddenly made WFTE an attractive investment. With a WFTE financing guarantee, the station received financing, and went on the air-in a short period of time.

Increased competition
WFTE competes with and differentiates itself from the seven other television stations in its market by broadcasting independent and syndicated programming, as well as live university basketball and football games not carried by the networks or cable channels. Again, through a joint operating venture, the viewers in Louisville have gotten more diverse programming choices.

KXAN Channel 36, Austin, TX (UHF, NBC)
KNVA Channel 54, Austin, TX (UHF, Warner Brothers)

A former Austin news anchor helped found KNVA Channel 54-- a station whose construction permit almost expired due to lack of capital to finish construction. KXAN entered into an LMA with Channel 54 and brought it on the air.

Hispanic Programming
The former news anchor is Hispanic, and had an interest in bringing Spanish-language public service programming to the market. After placing two Spanish-language programs on the air, the station is now developing a Spanish-language public affairs program in the language.

Unique Children's Show
Twelve-year-old Chelsea Hernandez is an Austin celebrity: KNVA provided her an outlet for her program in which she interviews other kids her age who have developed interesting ideas of their own.

Greater Public Service
KNVA repeats KXAN's 6 and 10 p.m. newscasts an hour later for those who miss them. The station also broadcasts its own "Weather Minute" program, which provides 30 seconds of up-to-the minute weather forecasting and 30 seconds of live Doppler radar images.

Outlet for Fledgling Warner Brothers Network
With only four other full-power stations in Austin, there was no station available to carry the new Warner Brothers Network, or for that matter, many other syndicated programs. KNVA is bringing more choice to Austin viewers and more competition.

Stations Saved From Financial Crises More Program Choices for Viewers

WOTV Channel 41, Battle Creek, MI (UHF, ABC)
WOOD Channel 8, Grand Rapids, MI (VHF, NBC)

WOTV, the ABC affiliate, was squeezed by competition from an overlapping ABC affiliate, the entrance of new stations into the market, and increased programming costs. Even after eliminating its local news programming and laying off 21 news staffers the station continued to lose more than $1 million per year. Without drastic action, the station would have gone dark.

Salvaged by LMA

In 1991, WOTV entered into an LMA with the NBC affiliate in Grand Rapids. WOTV is once again producing local news programming at 6:00 p.m. and 10:00 p.m. and after a four year effort, is once again profitable.

As a healthy station once again, WOTV has become an active force in community affairs, sponsoring many civic activities and events in Battle Creek and Kalamazoo.

KXTX Channel 39, Dallas/Ft. Worth, TX (UHF, Independent)
KXAS Channel 5, Dallas/Ft. Worth, TX (VHF, NBC)

Before its LMA with KXAS, KXTX Channel 39 was a marginal business, a struggling independent station competing with 15 other stations, including major independent group owners Paramount and Fox. It had no real news programs, very few viewers, big debts and no viable future.

Station Turned Around by LMA

After entering into an LMA with KXAS, KXTX was able to pay all of its bills and regain its financial footing. The station airs KXAS's 6 and 10 p.m. newscasts at 7 and midnight -- the first newscasts at those times in the Dallas/Ft. Worth area. KXTX's LMA allowed it to provide seven hours of local election coverage. On election night, the first wall-to-wall local election coverage in the history of the market.

WWHO Channel 53, Chillicothe, OH (UHF, Warner Brothers)
WCMH Channel 4, Columbus, OH (VHF, NBC)

Chillicothe's Channel 53 was poorly operated and in financial distress. The station found help in WCMH-Columbus. After entering into an LMA with the Columbus station, Channel 53's programming sprung to life. Consumers in the station's market now have access to programming that otherwise would not have been available.

10 o'clock News

Channel 53 added locally-produced daily newscasts (the first 10 p.m. newscast in the area), totalling 3.5 hours a week. It also opened a news bureau in Chillicothe and is slated to begin producing weekly community affairs programs. PSA's are produced in-house and aired regularly.

Local Sports

Sporting events of local interest -- Ohio University football and basketball, and Columbus Chill hockey -- have been added to the schedule. School closing announcements are computer generated and scrolled across regular programming.

Children's Programming

Another addition to Channel 53 since its LMA with WCMH-Columbus has been locally-produced "Kids 53" segments which airs within children's programs between 6 a.m. to 9 a.m. and 3 p.m. to 5 p.m. These segments feature a host who uses humor and graphics to educate kids on a wide variety of subjects.

More Jobs

Local jobs in traffic, news, technical operations, promotion and sales have been created.

LMA's Increase News, Public Service Programming

WEVU Channel 26, Bonita Springs, FL (UHF, ABC)
WBBH Channel 20, Ft. Myers, FL (UHF, NBC)

Channel 26 did not have a viable news department. It could not afford the capital expenditures necessary to establish one. However, after entering into an LMA with an WBBH-Ft. Myers, the news departments combined, and equipment became more affordable when spread and shared among the two stations.

4 and 5 p.m. News

As the bottom-rated television station in the market for more than ten years, WEVU could not afford a real news department. An LMA with WBBH, however, provided WEVU the opportunity to provide in-depth local news coverage for the first time. The combined news staff increased from 24 to 70, and the station added two more news bureaus. The station is serving the public by offering newscasts at times other than the traditional 6 and 11 p.m. slots. Channel 26 now provides its market's first 4 to 5 p.m. local newscast, and is gearing up to add the first 7 to 7:30 p.m. local newscast. And WEVU supplements WBBH's newscasts, which are the <u>only</u> source of news for all the cable companies in the market.

Extensive Election Coverage

WEVU also has access to satellite trucks through WBBH, which recently contributed to its recent election coverage. The station broadcasted from election headquarters and candidates homes, and sent crews to cover the governor's race and Sen. Connie Mack's re-election bid. WEVU also had a computer at the station which provided up-to-date election information, which was then broadcast through breaks in programming, and scrolled across the screen during regular programming. Without the LMA, this amount of coverage would not have been possible.

WOIO Channel 19, Cleveland, OH (UHF, CBS)
WUAB Channel 43, Cleveland, OH (UHF, independent/Paramount)

In Cleveland, WOIO Channel 19 was a victim of the network affiliation switches last year -- it was dropped by Fox in favor of Channel 8. At the same time, an independent station, WUAB Channel 43, was facing declining audience shares.

More Localized Programs

By entering into an LMA both Channel 19 and Channel 43 have increased the quantity and quality of their local programming. Channel 19 has been able to affiliate with CBS and has invested millions of dollars in initiating a new local news service, employing over 100 people and producing morning news inserts and two evening newscasts -- one at 6 p.m. and another at 11 p.m. Both stations have increased their public service to Cleveland residents, having substantially increased their hours of locally-produced programming.